Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company, and	)	
Southwestern Bell Communications Services, Inc.	)	CC Docket No. 97-121
d/b/a Southwestern Bell Long Distance	)	
for Provision of In-Region,	)	
InterLATA Services in Oklahoma	)	

To: The Commission

COMMENTS OF BELLSOUTH CORPORATION ON ALTS' MOTION TO DISMISS SOUTHWESTERN BELL'S APPLICATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN OKLAHOMA

Even if ALTS were correct that Brooks Fiber is not a qualifying competitor for purposes of Southwestern Bell's interLATA entry in Oklahoma under Section 271(c)(1)(A), Southwestern Bell's application is properly before the Commission under Section 271(c)(1)(B). ALTS mischaracterizes Section 271(c)(1)(B) and, in its effort to block any Bell company interLATA entry, regardless of the facts, falsely portrays the BOCs as conspirators in some bizarre effort to dupe an unwary Commission. ALTS' argument that BellSouth and other Bell companies somehow are using Southwestern Bell's application to affect the Commission's review of their own, future Section 271 applications is baseless.

To accomplish the Act's goal of increasing competition in long-distance services, Congress structured Section 271 so that the key to a Bell company's interLATA entry is

availability of the checklist items to competitors, not the existence of a particular kind of competitor. Accordingly, the Act provides that if none of a Bell company's interconnection agreements are with competitors that qualify as facilities-based providers of business and residential service under Section 271(c)(1)(A), the company is entitled to seek interLATA relief under Section 271(c)(1)(B). Congress thus sought to avoid precisely the outcome that ALTS seeks here: giving competitors the ability to hold interLATA competition hostage to the particular business plans of local entrants.

SOUTHWESTERN BELL'S APPLICATION SATISFIES SECTION 271(c)(1)(B)

If the Commission were to agree with ALTS that Brooks Fiber has never been a "qualifying" carrier under Section 271(c)(1)(A), then Southwestern Bell would be eligible to seek interLATA entry under Section 271(c)(1)(B) based upon its effective statement of terms and conditions. Contrary to ALTS' suggestion, Motion to Dismiss at 4, eligibility under subsection (B) is not limited to cases of bad faith bargaining or implementation. While those cases are expressly included within Section 271(c)(1)(B), they do not exhaust that provision. Indeed, ALTS' interpretation would negate subsection (B) where Congress expressly intended it to apply most assuredly: where "no such provider has requested the access and interconnection described in subparagraph (A)." (Emphasis added). ALTS cannot have it both ways. If Brooks Fiber is not "such provider" for purposes of subsection (A), then Southwestern Bell may proceed under subsection (B).

A. *Only a Request from a Qualifying Facilities-Based Provider Can Foreclose Entry under Section 271(c)(1)(B).*

The text, history, and purpose of the "A and B Tracks" of Section 271(c)(1) confirm that only a timely request from a CLEC that actually qualifies under Track A can foreclose Bell company entry under Track B. While Section 271(c)(1)(A) allows Track A entry based on interconnection with a qualifying provider — i.e., a CLEC that meets the "facilities-based" and "residential and business" requirements — Section 271(c)(1)(B) offers B Track entry "if . . . no such provider has requested access and interconnection" three months prior to the date that the Bell company files its application. As an author of this statutory language explained, "[s]ection 271(c)(1)(B) provides that a BOC may petition the FCC for this in-region authority if it has, after 10 months from enactment, not received any request for . . . access and interconnection from a facilities-based competitor that meets the criteria in section 271(c)(1)(A)."[1] Likewise, representative Tauzin clarified that "[s]ubparagraph (B) uses the words 'such provider' to refer back to the exclusively or predomina[nt]ly facilities based [local service] provider described in subparagraph (A)."[2] A CLEC must actually have launched facilities-based service to frustrate Bell company entry under the B Track; the CLEC cannot simply claim that it may one day provide such service.

The legislative history confirms that if the requesting CLEC has only "some facilities which are not predominant," "no [relevant] request has been received." 141 Cong. Rec. H8425, H8458. Likewise, a request for access from a provider that "serve[s] only business customers"

---

1. See 142 Cong. Rec. H1145, H1152 (daily ed. Feb. 1, 1996) (statement of Rep. Hastert).

2. 141 Cong. Rec. H8425, H8458 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin); see also Joint Explanatory Statement, S. Conf. Rep. No. 104-230, at 148 (1996) (Track B available where "no qualifying facilities-based competitor has requested access and interconnection").

does not foreclose the B Track. Id. A contrary rule, such as the one ALTS now seeks, would condition Bell company entry into interLATA services on the decisions of local competitors, some of the largest of which have every incentive to prevent such interLATA competition — a situation Congress sought to avoid by providing the alternative of entry under Section 271(c)(1)(B).

Congress did not want the Commission to have to guess whether a requesting CLEC might someday meet the "residential and business" and "facilities-based" requirements, or to rely on promises from requesters. Rather, it instructed the Commission to credit requests only from a CLEC that already has invested in a local network. In particular, Congress anticipated that such a request for interconnection and access might come under Sections 251 and 252 of the Act from a CLEC that already has commenced providing facilities-based, residential and business service. See S. Conf. Rep. No. 104-230, at 148 (noting pre-Act "forays of cable companies into the field of local telephony"). Such a facilities-based CLEC might be providing limited service within its own network before requesting interconnection, or it may have negotiated an interconnection agreement before enactment of the 1996 Act.[3] Alternatively, the limitation on B Track entry may kick in when a CLEC begins to provide facilities-based, residential and business service, after it already has requested interconnection. The CLEC's interconnection request would not have counted at the time it was made because the requester was not yet a qualifying, facilities-based

---

[3] See id. (noting Cablevision's interconnection with New York Telephone on Long Island); 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breaux) (anticipating that interconnection agreements "already . . . in place" prior to enactment of the 1996 Act would enable "immediate[]" A Track entry); see also First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15583 ¶ 165 (1996) (requiring submission of pre-Act agreements for state approval) ("Local Interconnection Order").

provider. However, there would be a continuing request from "such provider" once the CLEC qualified under subsection (A).

While the text and history of the Act confirm that only a request from a qualifying CLEC may bar B Track entry, common sense reinforces this conclusion. The B Track was included in the Act "to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market" due to the absence of a facilities-based local competitor. S. Conf. Rep. No. 104-230, at 148. This is especially important because companies such as AT&T, MCI, and Sprint want to protect their comfortable positions in the interLATA market against new competitors. Those companies may hold off on providing facilities-based service to protect their interLATA profits.[4] If this strategy absolutely barred Bell company interLATA entry, the result would be less competition at the local level and in long distance, to the detriment of consumers.

This is precisely what would occur if just any interconnection request could frustrate B Track entry, as ALTS proposes in its motion to dismiss. On one hand, ALTS offers its shrill declaration that Brooks Fiber does not qualify as an A Track carrier; on the other hand, ALTS claims that Brooks Fiber's interconnection request nonetheless blocks Southwestern Bell from entering interLATA services through the B Track. Adoption of such a misreading of Section 271(c)(1) would nullify B Track entry. Congress must have anticipated that there would be some request for interconnection in each State during the first 7 months after enactment of the Act — and, of course, this turned out to be the case (at least in BellSouth's experience).

---

[4] Indeed, AT&T reportedly made a calculated decision to put off its plans to enter the local market on a facilities basis in many states, electing instead to "strike resale deals" with incumbent LECS. AT&T's President is Wasting no Time in Shaking Things Up, Wall St. J., December 24, 1996, at A1.

Congress logically enacted a provision that hinges not on whether there would be any request during that initial period, but rather upon who makes the request. Bell companies may proceed under the B Track so long as no qualifying, facilities-based provider was included among the requesters.

ALTS asks the Commission to read the limitations on B Track entry effectively to swallow the rule. This is impermissible.[5] If the Commission is to give any meaning at all to Section 271(c)(1)(B) — and not to read it out of the Act entirely — then it must credit only those requests that come from qualifying carriers under Section 271(c)(1)(A). Otherwise, no Bell company will ever benefit from subsection (B). Each company would have to wait until a CLEC decided to acquire facilities before applying for interLATA relief.

B. *A Bell Company Remains Eligible Under the B Track for Three Months*

Congress also decided that a request from a qualifying CLEC should not foreclose the B Track immediately. Rather, when a qualifying CLEC requests interconnection or a requesting CLEC launches facilities-based local service for residential and business customers, this merely triggers the three month time frame in Section 271(c)(1)(B). The Bell company becomes ineligible for interLATA entry under the B Track only if it fails to submit its application within that statutory time frame. See S. Conf. Rep. No. 104-230, at 148 (noting three month deadline).

The three month window for filing a petition fits neatly with the Section 252(f)(3)'s 60-day time frame for receiving State approval of a statement of generally available terms and conditions. Because the State has 60 days to give the Bell company an answer (or let the

---

[5] See Lane v. Pena, 116 S. Ct. 2092, 2100 (1996); Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253 (1992) ("courts should disfavor interpretations of statutes that render language superfluous").

statement take effect), a Bell company knows when it files its statement that — so long as the state commission does not reject the statement — it will have one month to prepare its B Track application for the Commission. Thus, a Bell company that has not received a request for interconnection from a qualifying, facilities-based CLEC may begin the process toward B Track entry, secure in the knowledge that no potential competitor can abort that process simply by requesting local interconnection.

This appears to be precisely the case presented by Southwestern Bell's Application. Southwestern Bell submitted its statement of terms and conditions to the Oklahoma Corporation Commission on January 15, 1997, apparently before it became aware that Brooks Fiber had launched service to residential and business customers. Less than three months later (on April 11), Southwestern Bell submitted an application for interLATA relief to the Commission. If Southwestern Bell's factual assertion that Brooks Fiber did not begin serving both residential and business customers before January 15, 1997 (Southwestern Bell Br. 15, n.15) is true, then Southwestern Bell is eligible for interLATA entry under the B Track of Section 271(c)(1) regardless of whether Brooks Fiber constitutes such provider under the A Track.

CONCLUSION

ALTS' contention that the B Track is not available to Southwestern Bell is contrary to both the text and legislative history of the 1996 Act. Subsection (B) serves Congress's goal of creating competition sooner rather than later in all telecommunications markets. Congress recognized that deployment of competing local networks might take time. S. Conf. Rep. No. 104-230, at 148. Yet to further its goal that consumers benefit from lower priced and higher

quality interLATA services once local markets have been opened to competitive entry, Congress included section 271(c)(1)(B) "to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market." Id. The Act's multiple routes for in-region interLATA entry by the Bell companies ensure that local competition and long distance competition can spur each other on, but cannot hold each other back. By moving to dismiss Southwestern Bell's petition, ALTS proposes to unravel Congress' careful scheme to the detriment of American consumers. The Commission should firmly reject that proposal.

Respectfully submitted,

Walter H Alford /DGF

WALTER H. ALFORD
WILLIAM B. BARFIELD
JIM O. LLEWELLYN
1155 Peachtree Street, N.E.
Atlanta, GA 30367
(404) 249-2051

DAVID G. FROLIO
1133 21st Street, N.W.
Washington, DC 20036
(202) 463-4182

Attorneys for BellSouth Corporation

April 28, 1997

CERTIFICATE OF SERVICE

I, Brett Kilbourne, hereby certify that copies of the foregoing Comments of BellSouth Corporation on ALTS' Motion To Dismiss Southwestern Bell's Application To Provide In-Region, InterLATA Services In Oklahoma were served via first class U.S. mail, postage prepaid, this 28th day of April, 1997, to the following:

Richard J. Metzger
General Counsel
Association for Local Telecommunications Services
1200 19th Street, N.W.
Washington, DC 20036

*Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, DC 20554

*A. Richard Metzger, Jr.
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, DC 20554

*Richard Welch
Chief, Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, DC 20554

*Carol Mattey
Deputy Chief, Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, DC 20554

*Robert Pepper
Chief, Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W.
Room 822
Washington, DC 20554

*Thomas Boasberg
Special Assistant to Chairman Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

*James Coltharp
Special Counsel to Commissioner Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, DC 20554

*Daniel Gonzales
Legal Advisor to Commissioner Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, DC 20554

*James Casserly
Senior Legal Advisor to Commissioner Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, DC 20554


Brett Kilbourne

*Hand Delivery